

IN THE DISTRICT COURT OF THE UNITED STATES FOR THE
MIDDLE DISTRICT OF ALABAMA, NORTHERN DIVISION

RONNIE FENN,)
)
 Plaintiff,) CIVIL ACTION NO.
 v.) 2:05cv461-T
) (WO)
 TERRY S. KING and)
 BERT L. SMITHHART,)
)
 Defendants.)

ORDER

This cause is now before the court on plaintiff's notice of appeal (doc. no. 6), which the court is treating as a motion to proceed on appeal in forma pauperis.

28 U.S.C.A. § 1915(a) provides that "[a]n appeal may not be taken in forma pauperis if the trial court certifies in writing that it is not taken in good faith." In making this determination as to good faith, a court must use an objective standard, such as whether the appeal is "frivolous," Coppedge v. United States, 369 U.S. 438, 445, 82 S.Ct. 917, 921 (1962), or "has no substantive merit." United States v. Bottoson, 644 F.2d 1174, 1176 (5th Cir. Unit B May 15, 1981) (per curiam), cert. denied, 454 U.S.

903, 102 S.Ct. 411 (1981); see also Rudolph v. Allen, 666 F.2d 519, 520 (11th Cir. 1982) (per curiam), cert. denied, 457 U.S. 1122, 102 S.Ct. 2938 (1982); Morris v. Ross, 663 F.2d 1032 (11th Cir. 1981), cert. denied, 456 U.S. 1010, 102 S.Ct. 2303 (1982). Applying this standard, this court is of the opinion, for the reasons stated in the recommendation of the magistrate judge, that the plaintiff's appeal is without a legal or factual basis and, accordingly, is frivolous and not taken in good faith. See, e.g., Rudolph v. Allen, supra; Brown v. Pena, 441 F. Supp. 1382 (S.D. Fla. 1977), aff'd without opinion 589 F.2d 1113 (5th Cir. 1979).

Accordingly, it is ORDERED that the plaintiff's motion to proceed on appeal in forma pauperis be and it is hereby denied; and that the appeal in this cause be and it is hereby certified, pursuant to 28 U.S.C.A. § 1915(a), as not taken in good faith.

DONE, this the 30th day of June, 2005.

/s/ Myron H. Thompson
UNITED STATES DISTRICT JUDGE